



# SENATE BILL 560: Disciplining Judges - State Bar.

2019-2020 General Assembly

|                       |  |                     |                    |
|-----------------------|--|---------------------|--------------------|
| <b>Committee:</b>     | Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate | <b>Date:</b>        | May 6, 2019        |
| <b>Introduced by:</b> | Sens. Rabon, Britt   | <b>Prepared by:</b> | Shawn Middlebrooks |
| <b>Analysis of:</b>   | First Edition  |                     | Staff Attorney     |

**OVERVIEW:** *Senate Bill 560 would authorize the State Bar Council to investigate and resolve inquiries concerning the qualification and conduct of judges and justices in the General Court of Justice.*

## CURRENT LAW AND ANALYSIS:

### SECTION 1

Article 30 of Chapter 7A of the General Statutes provides for the investigation and resolution of inquiries concerning the qualification and conduct of judges and justices in the General Court of Justice (hereinafter Judge). The General Court of Justice consist of the appellate division, superior court division and district court division. G.S. 7A-4.

**Senate Bill 560** would repeal Article 30 of Chapter 7A (G.S. 7A-374 – 7A-399).

### SECTION 2

The North Carolina State Bar Council (hereinafter "Council") is vested with plenary authority to regulate the professional conduct of licensed North Carolina lawyers and State Bar certified paralegals. Among other things, the Council is authorized to:

- Ensure the competence of lawyer and paralegals.
- Form and adopt rules of professional ethics and conduct.
- Investigate and prosecute matters of professional misconduct.
- Grant and deny petitions of reinstatement.
- Resolve matters related to membership status and arbitrate disputes regarding legal fees.
- Certify legal specialist and paralegals.
- Determine when a member is disabled.
- Maintain a registry of interstate and international law firms conducting business in the State.
- Form and adopt procedures for accomplishing these purposes. G.S. 84-23.

**Senate Bill 560** would:

- Make clarifying and technical changes regarding the Council's authority under G.S. 84-23.
- Authorize the Council to investigate and resolve inquiries concerning the qualification and conduct of Judges serving in the General Court of Justice.

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## **SECTION 3**

**Senate Bill 560** would add a new "Article 5", "Investigation and Discipline", to Chapter 84 of the General Statutes.

## **SECTION 4**

**Senate Bill 560** would recodify Chapter 84 of the General Statutes as follows:

| <b>Previous Section</b>  | <b>New Section</b>   |
|--|--|
| G.S. 84-28. <del>Discipline and disbarment.</del>                              | G.S. 84-40. <u>Investigation and discipline of judges and attorneys.</u> |
| G.S. 84-28.1. Disciplinary hearing commission.                                 | G.S. 84-41.  |
| G.S. 84-28.2. Persons immune from suit.  | G.S. 84-42.  |
| G.S. 84-29. Evidence and witnesses.  | G.S. 84-43.  |
| G.S. 84-30. Rights of accused person.  | G.S. 84-44.  |
| G.S. 84-31. Counsel; investigators; powers; compensation.                      | G.S. 84-45.  |
| G.S. 84-32. Records and judgements and their effect; restoration and licenses. | G.S. 84-46.  |
| G.S. 84-32.1. Confidentiality of records.                                      | G.S. 84-47.  |
| G.S. 84-36. Inherent powers of courts unaffected.                              | G.S. 84-48.  |
| G.S. 84-36.1. Clerks of court to certify orders.                               | G.S. 84-49.  |
| G.S. 84-37. State bar may investigate and enjoin unauthorized activities.      | G.S. 84-50.  |

## **SECTION 5**

Any attorney admitted to practice law in North Carolina is subject to the jurisdiction of the Council pursuant to G.S. 84-40.

**Senate Bill 560** would amend G.S. 84-40 to make Judges subject to the jurisdiction of the Council pursuant to the NC Code of Judicial Conduct.

## **SECTION 6**

In any investigation concerning the misconduct or disability of a lawyer, the Council, including any committee or disciplinary hearing commission, may administer oaths, and subpoena witnesses and other tangible evidence. G.S. 84-43.

**Senate Bill 560** would expand the Council's authority under G.S. 84-43 to include investigations concerning the qualification and conduct of Judges serving in the General Court of Justice.

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## SECTION 7

**Senate Bill 560** would create three new sections under Art. 5 of Chapter 84 of the General Statutes.

- **G.S. 84-51.** would establish definitions in regard to any investigation concerning the qualification and conduct of any Judge in North Carolina.
- **G.S. 84-52.** would do the following:
  - Authorize the Council to issue a *private letter of caution* to a Judge for minor misconduct.
  - Authorize the Supreme Court to issue a *public reprimand, censure, suspend or remove* a Judge for misconduct, persistent failure to perform, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice.
  - Set compensation and retirement restrictions on Judges who are suspended or removed from service.
  - Authorize the suspension or removal of a Judge who is unable to perform his or her duties because of health reasons.
  - Clarify compensation and retirement rights for Judges suspended or removed for health reasons.
- **G.S. 84-53.** would do the following:
  - Allow a citizen to file a written complaint with the Council concerning the qualifications or conduct of a Judge.
  - Clarify the Council's authority to investigate complaints against Judges.
  - Make all papers filed with and proceedings before the Council under this Article confidential.
  - Clarify that all information to the Council is privileged and restrict the information from being used in certain civil actions.
  - Make letters of caution issued by the Council are confidential.
  - Make the notice and statement of charges, the answer, and all other pleadings in a disciplinary proceeding under this Article confidential.
  - Require 5 members of the Council to concur in recommending reprimand, censure, suspension or removal of a Judge.
  - Require a majority of the members of the Supreme Court to order a reprimand, censure, suspension or removal of a Judge.
  - Clarify when records under this Article are not confidential.
  - Authorize the Council to issues advisory opinions and grant the Council trial court contempt powers.

**EFFECTIVE DATE:** This section becomes effective January 1, 2019. (See full text for additional information).